

## REMARKS

### **Summary of Office Action**

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statements filed January 22, 2008 and August 17, 2009 by returning signed and initialed copies of the Forms PTO-1449 submitted therein.

Applicants also note with appreciation that the Examiner has withdrawn the rejection of claims 12-31 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yashuda et al., JP 7-330560 (hereafter "YASHUDA") and Albacarys et al., U.S. Patent No. 6,338,855 in view of Golz-Berner, U.S. Patent No. 6,989,150 (hereafter "GOLZ").

Claims 21, 23 and 24 are objected to because of an informality.

Claims 12-21 and 26-31 are newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over YASHUDA in view of GOLZ.

Claims 12-31 are newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over (a machine translation of) Astrid et al., DE10333265 (hereafter "ASTRID") in view of GOLZ.

### **Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested, in view of the following remarks.

### ***Response to Objection to Claims***

Claims 21, 23 and 24 are objected to because they contain words written in capital letters,

which allegedly is improper.

Applicants respectfully request that this objection be held in abeyance until the Examiner has confirmed that claims 21, 23 and 24 recite allowable subject matter.

***Response to Rejection under 35 U.S.C. § 103(a) over YASHUDA as Primary Document***

Claims 12-21 and 26-31 are newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over YASHUDA in view of GOLZ. The rejection essentially asserts that it would allegedly have been obvious to one of ordinary skill in the art to add to the hair dye compositions of YASHUDA (which comprise a protein hydrolyzate which may, *inter alia*, be a silk protein hydrolyzate, and amino acids such as glycine, (phenyl)alanine, valine, leucine, serine, threonine, tyrosine, asparagine, aspartic acid, cysteine, histidine, arginine, glutamine, and pyrrolidonecarboxylic acid) an extract from mussel threads in view of the disclosure of GOLZ (which allegedly teaches “ a cosmetic preparation comprising extracts of byssus (mussel silk) (see claim 8 of Golz-Berner et al.)”).

Applicants respectfully traverse this rejection. In this regard, it is again pointed out that present independent claim 12, for example, is drawn to a cosmetic preparation which comprises

- (a) a protein hydrolyzate from at least one of silk, pashmina, cashmere wool, merino wool and mohair,
- (b) an extract from mussel threads of mussels,
- (c) at least one of sericin and a hydrolyzate of sericin, and optionally,
- (d) one or more amino acids which are biogenic and/or functional.

It is not seen that any of YASHUDA and GOLZ mentions sericin or a hydrolyzate of sericin, let alone teaches or suggests that sericin and/or a hydrolyzate of sericin would serve any useful purpose in the hair dye (decolorant) composition of YASHUDA. For this reason alone, YASHUDA in view of GOLZ is unable to render obvious the subject matter of any of the instant claims to one of ordinary skill in the art.

Further, regarding GOLZ it is again submitted that this document is directed to a cosmetic preparation of active substances which protects the skin against free radical aggression in a particularly effective manner and consists of (i) a bark extract of quebracho blanco which contains at least 90 wt. % of proanthocyanidine oligomers, (ii) a silkworm extract which contains the peptide cecropine, (iii) amino acids and a vitamin mixture, (iv) a non-ionic, cationic or anionic hydrogel, (v) phospholipids, (vi) a yeast disintegration product and (vii) cyclodextrins. The preparation can contain additional active substances such as plant extracts of acerola, sea weed, citrus, bitter orange, cherry, papaya, tea, coffee beans, skin tree and angelica. See, e.g., abstract of GOLZ.

Further, according to claim 8 of GOLZ particularly relied on by the Examiner the preparation of claim 1 of GOLZ may comprise as one of the components thereof algae selected among omega plankton, providing a high portion of cerebrosid stimulants, microalgae of the chlorella species and macro algae of the ulva species associated with byssus (mussel silk) as biotechnological protein fraction and subsequently associated with dextrine, wherein the product appears in the mixture with peptide derivates derived from .alpha.-MSH and associated with xanthin.

Apart from the fact that claim 8 does not mention any extract from threads of mussels but merely mentions extracts or treated extracts of certain kinds of algae which are associated with

byssus (mussel silk) as biotechnological protein fraction and subsequently associated with dextrin, wherein the product appears in the mixture with peptide derivates derived from  $\alpha$ -MSH and associated with xanthin, it is not seen what would have provided an apparent reason for one of ordinary skill in the art to add any of the many examples of optional components of the cosmetic preparation of GOLZ, i.e., a preparation which protects the skin against free radical aggression and consists of a bark extract of quebracho blanco which contains at least 90 wt. % of proanthocyanidine oligomers, a silkworm extract which contains the peptide cecropine, amino acids and a vitamin mixture, a hydrogel, phospholipids, a yeast disintegration product and cyclodextrines as critical components, to a hair dye composition according to YASHUDA, i.e., a composition which (merely) contains certain amino acids and a protein hydrolyzate as essential components. The present Office Action does not provide any explanation in this regard, either.

Applicants submit that for at least all of the foregoing reasons, YASHUDA in view of GOLZ is unable to render obvious the subject matter of any of the instant claims. Accordingly, the rejection of claims 12-21 and 26-31 under 35 U.S.C. § 103(a) over YASHUDA and GOLZ is without merit, wherefore withdrawal thereof is warranted and respectfully requested.

***Response to Rejection under 35 U.S.C. § 103(a) over ASTRID as Primary Document***

Claims 12-31, i.e., all claims of record, are newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over ASTRID in view of GOLZ.

Applicants respectfully traverse this rejection as well. In particular, it is pointed out that the present application is a National Stage of International Application No. PCT/EP04/10185, filed on

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September 11, 2004. ASTRID was published on February 17, 2005, i.e., after the effective U.S. filing date of the instant application. Accordingly, ASTRID is not available as prior art with respect to the present claims. For this reason alone, the instant rejection under 35 U.S.C. § 103(a) over ASTRID in view of GOLZ is clearly unwarranted and should be withdrawn as well.

### **CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, wherefore an early issuance of the Notices of Allowance and Allowability is earnestly solicited. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
Roger PICANO et al.

/Heribert F. Muensterer/  
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